

1 VIRGINIA:

2

3 IN THE COUNTY OF WASHINGTON

4

5

6

7

8

9

10 DEPARTMENT OF MINES, MINERALS, AND ENERGY

11

12

13

14

15 JUNE 15, 1999

16

17

18

19

20

21

22

23

24

25

1

2

3

4

5

6 MR. WAMPLER: I'm Benny Wampler, Deputy Director for
7 the Virginia Department of Mines, Minerals, and Energy and
8 Chairman of the Gas and Oil Board. I'll ask the members to
9 introduce themselves.

10 MR. BRENT: My name is Mason Brent. I'm from Richmond
11 and I represent the oil and gas industry.

12 MR. KING: My name is Clyde King. I'm from Abingdon.
13 I represent the public.

14 MR. LEWIS: Max Lewis, from Buchanan County, public
15 member.

16 MS. RIGGS: Sandra Riggs, Assistant Attorney General,
17 here to advise the Board.

18 MR. FULMER: Tom Fulmer, Department of Mines,
19 Minerals, and Energy.

20 MR. WAMPLER: The first item on the agenda, the Board
21 will remember, we had an appeal of the inspector's decision
22 regarding the permitting of Equitable Production Company's
23 operation identified as VC3970, application number 3702, permit

24

--

1 number 4118. This was docket number VGOB99-03/16-0717. It's
2 continued from May. Since...you remember, Mr. Kiser
3 represent...met with the Board last month and represented that
4 the matter had been settled and recommended we declare the
5 decision moot. We decided to give it another month to see if
6 we didn't get anything in writing from Ms. McFall. Mr. Fulmer,
7 you want to update the Board on what has happened? I
8 understand there was a modification to the permit, that Ms.
9 McFall was noticed.

10 MR. FULMER: There was a modification submitted by
11 EREC, in accordance with their conversation with Ms. McFall.
12 They submitted the modification. The modification ran the
13 required notification period. There was no objection received
14 and the permit...or the modification was issued. Also, since
15 that time, we've made several inquiries with Equitable
16 Production Company as to a follow up letter from Ms. McFall.
17 We were assured several times that she was going to fax a
18 letter to us in that regard. As of this date, we have not
19 received any, but the permit application was approved and
20 issued.

21 MR. WAMPLER: And there was no further objection from
22 her?

23

24

25

1 MR. FULMER: No further objection.

2 MR. WAMPLER: The recommendation last month from Mr.
3 Kiser was that the Board consider then that it becomes moot
4 upon the issuance of that modification.

5 MR. KING: We take no action on it.

6 MR. WAMPLER: The Board...we waited thirty days. We
7 can decide that it's now moot or...and then dismiss the appeal,
8 or whatever your pleasure is. If you see any merit in further
9 continuance, or what have you.

10 MR. BRENT: I...I would move that we dismiss it, Mr.

11 Chairman.

12 MR. KING: I'll second the motion.

13 MR. WAMPLER: Motion and second to dismiss the appeal.

14 Any further discussion?

15 (No audible response.)

16 MR. WAMPLER: All in favor, signify by saying yes.

17 (All Board members signify yes.)

18 MR. WAMPLER: Opposed, say no. Appeal is dismissed.

19 The second item on the agenda today is the Board will consider
20 an appeal of the inspector's decision rendered as a result of
21 informal fact finding conference 11299. The H.P. Presley
22 heirs, docket number VGOB99-06/15-0724, and Mr. Fulmer passed

1 out to the Board a fax or is passing...sorry, handed to me a
2 fax that he received, as you can tell, late yesterday afternoon
3 where the Russell Presley...Russell Vern Presley, II has
4 informed the Board that he wishes to drop the appeal.

5 MR. KING: Do we need to have a motion?

6 MR. WAMPLER: To dismiss based on the request.

7 MR. LEWIS: I make a motion to dismiss.

8 MR. WAMPLER: Motion to dismiss.

9 MR. KING: Second.

10 MR. WAMPLER: Motion and second. Any further
11 discussion?

12 (No audible response.)

13 MR. WAMPLER: All in favor of dismissal, say yes.

14 (All Board members say yes.)

15 MR. WAMPLER: Opposed, say no. The matter will be
16 dismissed. The third item on the agenda today, the Board, on
17 its on motion, will reconvene dockets VGOB98-03/24-0625 for
18 unit T36, VGOB98-09/15-0681 unit S35B, and VGOB98-03/24-0626
19 unit S36 to consider concerns raised by Danny McClanahan and
20 Jama McClanahan concerning ownership of gas and oil rights in
21 their letter of March 19...19th, 1999. We'd ask the parties
22 that wish to address the Board in this matter to come forward

23

24

25

1 at this time. If there's not enough chairs, we'll move them
2 up. We don't want to limit anybody's ability to come forward.
3 Is there anyone else? If there is, we'll just get a chair
4 brought forward, and then we'll allow you to speak.

5 (Court Reporter makes adjustments and people come
6 forward.)

7 MR. WAMPLER: If you will, introduce yourself for the
8 record, each of you, please.

9 DANNY MCCLANAHAN: My name's Danny McClanahan.

10 THELMA OSBORNE: My name's Thelma Osborne.

11 MARTHA SMITH: Martha Smith.

12 SARAH DAY: Sarah Day.

13 JOE HORNE: Joe Horne. Joe Horne.

14 MR. WAMPLER: Yes. Thank you. Are you going to be
15 able to hear him or is he going to need to come forward? We'll
16 get a chair up here for you. We may have to slide the mike
17 down. In order to keep a good record, too, as different ones
18 of you talk, we might want to pass the mike down, okay. Just
19 to make sure we get the record. Are there any others?

20 MR. SWARTZ: Mark Swartz and Les Arrington for the
21 operator.

22 MR. WAMPLER: Okay. Record show there are no others.

23

24

25

1 You may proceed then.

2 DANNY MCCLANAHAN: Okay. First off, I was kindly a
3 little upset the you all informed these people. You know, you
4 all informed them like that's all I was coming here for was
5 about ownership of gas which we know that you all can't, or
6 Pocahontas Gas Partnership cannot, make that decision. That's
7 for courts to make that decision. Am I right or am I wrong?

8 MR. WAMPLER: That's right.

9 DANNY MCCLANAHAN: All right. Your all's job is to
10 make sure that these big companies go by the law, that you all
11 set forth here and I've got right here in front of me, right?
12 You know, to me that's what you all is supposed to do. All
13 right. And the only reason I brought that up is because in the
14 first beginning on T36, that's the first well in that unit.
15 They stated there that I owned my gas and oil rights, all
16 right, and held a percentage of it. All right. Now, when the
17 force pooling came up, evidently Ms. Osborne and them has hired
18 a lawyer and they've, I guess, got into it with Pocahontas Gas,
19 and from that point on, they listed me as a surface owner only,
20 which I have deeds here to show that that's...that's not right.
21 I feel like I own my...not the mineral rights, but gas and oil
22 because you all yourself, on this information that you're

23

24

--

1 supposed to give, you all state that it's got to be gave to the
2 coal operators, mineral owners, gas and oil. That's all, you
3 know, that's five separate things, right. Okay. From that
4 time on, they quit, like I say, it gave me...I was left out of
5 the force pooling and everything which, you know, to me they're
6 in violation of law. That's one of them.

7 MR. WAMPLER: Now, is that as of T36?

8 DANNY MCCLANAHAN: Yes.

9 MR. WAMPLER: Okay. Mr. Swartz?

10 MR. SWARTZ: Our title opinions show that...well, let
11 me...we show that he owns a tract in S36 and T36. We do not
12 show any tract...any interest at all in S35. So, you've got
13 three on the docket this morning.

14 MR. WAMPLER: Well, I think what he's doing is taking
15 one at a time.

16 DANNY MCCLANAHAN: Right. Right. Well, the S35, it's
17 just all together. The S35, the only reason I brought that in
18 is because it's the next unit to the left of my unit...two
19 units and the well is approximately probably fifty to a hundred
20 foot from the unit, which there's seven hundred and some feet
21 that's over...over in this other unit that my land's laying in.
22 So, that well is more or less...it's drawing more off of this

23

24

25

1 one than it would be this other unit.

2 MR. SWARTZ: The only reason I mentioned that is we
3 have brought with us this morning revised exhibits B3 and E
4 with regard to units S36 and T36 because it would be our
5 preference to treat Mr. McClanahan's visit here this morning
6 and his objections as something in the nature of a petition to
7 modify the prior orders to pool his interest as a claimant, and
8 so we actually have that paperwork with us this morning and I
9 would simply say that the reason it was pooled the way it was
10 is, when you do record title, and we had title opinions done,
11 our lawyers were telling, not me, but the lawyers that we use
12 for title work were telling Mr. Arrington that Danny was a
13 surface owner. Now, obviously, he feels very strongly he's not
14 a surface owner. He's asserted a gas and oil claim, and the
15 reason I'm coming in here with this paperwork is I want to take
16 his word for it and we are requesting to pool him as a gas and
17 oil claimant and I just...Les and I could---.

18 DANNY MCCLANAHAN: Well, still, though, there's
19 another thing, though. You know, that the fines that could be
20 incurred upon you all. To me, you all blatantly done that.
21 You know, you done that with intent that I wasn't going to
22 catch nothing like that. Pooling the interest, yes, I would

23

24

25

1 like that. But, to me, you broke the law by doing that because
2 it wasn't you all. You all pay people to go down there in that
3 courthouse and research these deeds and the first one, they
4 made that conclusion that I should been notified as a gas
5 owner. Now, like I say, after they hired a lawyer, and these
6 people over here, they changed their mind and said I'm just a
7 surface owner. Now, they've got deeds. When Lincus Horne sold
8 his property, he reserved all coal and mineral rights in that
9 conveyance with a right to mine or remove the same. Now, the
10 date that this deed was wrote, most deeds is wrote up by a
11 lawyer or a bank or something, all right. Code of Virginia in
12 1957, Code of Virginia 45.1-180(L) defines minerals. I mean,
13 if you're familiar with it, you can look at it. It don't
14 include gas. And all other deeds after that stated that there
15 was exempted in the deeds was all coal, mineral, gas, and oil
16 rights that were sold or exempted before. So, that brought the
17 gas and oil into play to me as far as I'm concerned.

18 MR. WAMPLER: Did...did you folks have anything or are
19 you just here to---?

20 THELMA OSBORNE: I just brought my deeds to show what
21 we have.

22 MARTHA SMITH: We own all the coal, mineral, and gas

23

24

--

1 rights. It's in the deed. It's been reserved and excepted.

2 MR. WAMPLER: You're already in the pool, though.

3 MARTHA SMITH: No, we objected to the pooling.

4 THELMA OSBORNE: But, the pooling was entered and you
5 were named party.

6 MR. WAMPLER: Yeah, you're named in the pool is what
7 I'm saying. It's in the force pool. Yes, ma'am.

8 THELMA OSBORNE: One thing I'd like to tell you. We
9 have a right of way and it says specifically down the old Pine
10 Ridge Road, as stated---.

11 JOE HORNE: Can I reach over and let you read it?

12 THELMA OSBORNE: ---And the next deed says fifteen
13 foot that was sold and they dug a well in the middle of this
14 fifteen foot part.

15 DANNY MCCLANAHAN: Excuse me, sir. This has...what's
16 she's telling you ain't got a thing to do with what is before
17 the Board today.

18 THELMA OSBORNE: Yeah. Yeah, it is.

19 DANNY MCCLANAHAN: No, you all...you're talking about
20 your all's right of way and everything else. That's not my
21 objection. I'm not worried about what they've done to you all.

22 THELMA OSBORNE: I know, but this needs to be told,
23
24
25

1 right?

2 MR. WAMPLER: Well, I understand. He is correct.
3 What's before the Board is his request for the Board's
4 consideration.

5 THELMA OSBORNE: Okay. The well was in our right of
6 way and our right of way is cut in two. It's in the middle
7 because we have videos of it.

8 MR. WAMPLER: Well, what we'll try to do is after the
9 hearing, it's not a part of the hearing, is maybe get you and
10 Mr. Arrington and see if there's something there that can be
11 worked out. It would be another day and another case that
12 would come before the Board if, in fact, it's something that
13 should.

14 THELMA OSBORNE: Well, I have called...I called Tom
15 Fulmar, going to sleep over there. And I also called Rick
16 Cooper.

17 JOE HORNE: Really, what we want to try to tell---.

18 THELMA OSBORNE: And Rick Cooper, then he called the
19 one that's over the part where the well was dug and they called
20 me and he said he went up there and looked at it and it really
21 had been dug right in the middle of the right of way and our
22 road was cut in two.

23

24

25

1 JOE HORNE: ---What we want you to see that the
2 rights to the gas and the oil had been excepted as far back as
3 we can check it.

4 THELMA OSBORNE: As far back as we could find a deed.

5 MARTHA SMITH: And Mr. McClanahan, he's been
6 misinformed by Mr. Arrington that he owned gas.

7 DANNY MCCLANAHAN: No, ain't nobody misinformed me.

8 MARTHA SMITH: Well, that's what the letter said.

9 DANNY MCCLANAHAN: I...I'm not...I've got a ninth
10 grade education and I've researched these deeds. There's
11 not...I know you all reserved the coal and minerals in 1957,
12 but you all cannot reserve coal specifically because Mr.
13 Stillwell sold the coal off from that hundred and forty-three
14 point so many acres in 1890 something.

15 MARTHA SMITH: He leased it.

16 DANNY MCCLANAHAN: So, Mr. Lincus Horne can't exempt
17 something that he ain't got.

18 MS. RIGGS: Well, this Board can't make title
19 determinations.

20 DANNY MCCLANAHAN: That's exactly what I said. That's
21 exactly right.

22 MS. RIGGS: And I think you started out with that and
23
24
25

1 you're exactly right.

2 DANNY MCCLANAHAN: We're...we're here to just see
3 about the law that I feel like they broke.

4 MS. RIGGS: All...all this Board can do is, if you
5 make a claim to the gas, is name you as a potential claimant in
6 the pooling application and once you go to Court and get your
7 title squared away, if you come back to the Board, then the
8 Board can disperse the money based on the Court's
9 determination, but the Board cannot examine these deeds.
10 Obviously, a deed does you no good unless you go all the way
11 back in the chain of titles---

12 DANNY MCCLANAHAN: That's exactly right.

13 MS. RIGGS: ---and bring it all the way forward.

14 THELMA OSBORNE: We did. We went all the way back to
15 W. P. Stillwell.

16 MS. RIGGS: But, this Board doesn't have legal
17 jurisdiction to make those kinds of determinations. They have
18 to be made by a court of competent jurisdiction that can
19 construe that property laws of Virginia and examine the deeds
20 in a court of law and the statute specifically says that this
21 Board is to escrow the money of conflicting claimants until
22 such time as one of two things happens: you either get a court

23

24

25

1 decision or you reach a settlement among all the potential
2 claimants and come back before the Board and seek disbursement
3 based on a stipulated settlement.

4 THELMA OSBORNE: But, when they put it in pooling, you
5 get nothing. I know some people that's got two dollars and
6 something a year.

7 MS. RIGGS: Well, it depends on how much interest you
8 have in the pool.

9 THELMA OSBORNE: So, I mean, you don't get anything.

10 DANNY MCCLANAHAN: Well, I'm like her in a way on
11 that. I...I don't think it's fair at the going rate, well this
12 is a few years ago, one good well could produce up to twenty
13 five thousand dollars (\$25,000) worth of gas a day.

14 THELMA OSBORNE: And I hope, you know, what I'm hoping
15 for, if they want the gas, which I know they've done got two
16 hundred and ninety some billion dollars worth shipped out of
17 Buchanan and into West Virginia because it was in the Bristol
18 Herald. If they want the gas, why don't they just get together
19 and set a price to buy before they pull it out?

20 DANNY MCCLANAHAN: They want to lease it for five
21 dollars (\$5) an acre off from you, which is not a fair price
22 because per ton of coal, gas research institute out of

23

24

25

1 Charlottesville, Virginia, type of coal in Buchanan County can
2 hold five to nine hundred cubic feet of gas per ton.

3 MS. RIGGS: Well, the five dollars (\$5) an acre is the
4 cash consideration which is a delay rental. The royalty is a
5 one-eighth royalty.

6 THELMA OSBORNE: But, we're just here today to say
7 that all the gas and oil minerals was exempted from his deed
8 when it was made to him.

9 MS. RIGGS: Well, we can't...we can't make that
10 determination.

11 DANNY MCCLANAHAN: Like I...like I tried to explain to
12 Ron and them, your brother and them, I'm not here to fight you
13 all. That's a...we'd be throwing money away for lawyers trying
14 to fight for something we don't even know is going to be our'n
15 yet till it's made a decision. Am I right or am I wrong?

16 MS. RIGGS: Well, you're going to have to go into
17 court to get...to get your---

18 DANNY MCCLANAHAN: Somebody has to go into court.
19 It's my understanding there's a case coming up in the courts
20 sometime this summer, am I not right?

21 MR. SWARTZ: It's been decided.

22 DANNY MCCLANAHAN: Oh, okay. Paid out of court, okay.

23

24

25

1 That's what I thought. But, my main primary reason is...is
2 that they pay people to go down there and search these deeds
3 and they felt like that I was that at the time and then they
4 just left me out of the force pooling all other wells and
5 everything and, like I say, they blatantly...blatantly violate
6 the law.

7 MS. RIGGS: Well, if you feel that that's the case,
8 your remedy is in court, again.

9 DANNY MCCLANAHAN: That's exactly what I would like to
10 do.

11 MS. RIGGS: For penalties. All this Board can do for
12 you, if you want---.

13 DANNY MCCLANAHAN: Make them revise.

14 MS. RIGGS: Well, we can...this Board can modify the
15 pooling based on these new exhibits they've given us to name
16 you as a claimant.

17 DANNY MCCLANAHAN: What I'm here, too, is I'm wanting
18 you to recognize...the Board to recognize that they are
19 violating the laws every day over there. Every day. All
20 right. For...well, like confirming to the laws of giving
21 notice, you know, they didn't do that. That's three or four
22 different ones. All right. They did drill the core hole

23

24

--

1 within two hundred foot of my house. There's no signs or
2 nothing there. They didn't stake nothing. How did they do
3 that? I thought that was supposed to be within two hundred and
4 fifty foot or something like that of a dwelling, occupied
5 dwelling. And they didn't...no permits. I didn't see nothing.
6 And then they put this radioactive stuff down in there two
7 hundred foot from my house to find out how thick these coal
8 seams and stuff is, you know, how're they getting away with
9 that? Survey lines, ma'am, you all's laws state that they are
10 supposed to show all lines that were actually surveyed as solid
11 lines. Lines took from the deed is broken lines and clearly
12 they're not doing that because I just leased them the right of
13 way for some wells. Ma'am, right here's what they've had on
14 all the force pooling. There's my property there. It's the
15 big one in the middle kind of. Let me find it here. I know
16 it's in here. Now, on the proposed wells that they're going to
17 put on my property now, they shifted the one line over to their
18 discretion to make not have to pay me for pipelines and stuff
19 on that. Now, they're not actually surveying it, so they're
20 violating the law there. I'm sure they're charging somewhere
21 along the line in this force pooling for that. People's having
22 to jerk that out of their pocket.

23

24

25

1 MR. WAMPLER: Well, Mr. McClanahan, these are
2 certified plats by an engineer.

3 DANNY MCCLANAHAN: Well, it seems like that certified
4 engineer is...is in jeopardy of losing his license. How can he
5 do that on two different well sites and two force pooling and
6 leave it like that right there, then when they come on me and
7 bargain with me, change the lines when it's never been surveyed
8 and it shows that it is.

9 MR. WAMPLER: We'll let them address that.

10

11

12 MR. SWARTZ: You know, I can fight with people all day
13 long over here and my position today is that anyone who comes
14 to our company and says we claim coalbed methane, we will do
15 exactly what we did this morning and that is recognize their
16 claim, so it can be sorted out. My explanation with regard to
17 the reason why this was pooled is our title examinations show
18 that coal and other minerals did not make it to him in the
19 chain of title. There is a Virginia case that has held, it's
20 an old case, but that has held specifically that the term
21 minerals includes gas and oil. His research causes him to
22 believe that that is incorrect and what he's filed with the

23

24

25

1 Board shows his very strongly held belief that he owns the oil
2 and gas because it's not a mineral, that's his opinion, and
3 wasn't severed. We're not in the business when we do title to
4 try to resolve claims. We do a stand-up title in the
5 courthouse to see who has the oil and gas minerals and the coal
6 minerals. You know, we're aware of the case law in this state
7 with regard to ownership issues, but we don't ultimately
8 determine those. So, essentially, what I'm telling you is, and
9 I'm not going to spend a lot of time arguing here, but, you
10 know, we are being accused of violating the law and I'm accused
11 of that a lot and my clients are and I deny that and my
12 explanation for the way these units were pooled is the same way
13 we pool everything else. We do a title on every tract. And the
14 record title here shows coal and oil and gas owned as we showed
15 in our original pooling applications. What has happened
16 subsequent to that is Mr. McClanahan has stated his very firmly
17 held belief that he owns the coalbed methane, and I'm not
18 arguing with him, because I don't have a dog in that hunt. If
19 it turns out he's entitled to the money, bless him, you know,
20 if it turns out he isn't, somebody else is going to get it, but
21 my company is never going to wind up...my clients are never
22 going to wind up with that money. So, our solution here, which

23

24

25

1 I don't think makes him happy, or any of these folks happy
2 because it's going to require escrow, but our solution is when
3 people come forward with a claim, we're not going to tell them
4 your claim is good, bad, or questionable or whatever. Our
5 response is you've asserted a claim, we're going to pool you.
6 So, you know, our position is that that's how this happened.
7 That is how...that is why we're here this morning to add what
8 we think is a surface owner to the mix. But, he clearly thinks
9 he's not a surface owner and thinks he has a claim to the, not
10 only the coalbed methane, but the gas and oil as well. So,
11 that is...that is our explanation of what happened here and our
12 fix. And I'm not going to get drawn into a debate as to who
13 owns what, because I'm never going to satisfy anybody. You
14 know, and that's obviously for the courts anyway. But, you
15 know, we did title abstracts and we had title opinions from
16 David Altizer's firm with regard to his opinions as to who
17 owned what. Clearly Danny McClanahan does not agree with him
18 and we're not arguing with him, but that's, you know, that is
19 our position this morning and frankly, you know, I think to not
20 have multiple trips, we came prepared this morning to help you
21 facilitate, you know, getting his interest into this.

22 DANNY MCCLANAHAN: Still, he's still sitting here

23

24

25

1 telling you, the Board, that they've got certain steps they go
2 by to determine the mineral rights and who they've got to
3 notify. Why...why did they have people that notified me of my
4 rights in the first well, then they changed their mind on the
5 rest of them? They, theirselves, took it into their hand to make
6 that determination, which he said is not their job.

7 MR. SWARTZ: Well, the notice requirements for well
8 permits and for pooling are completely different.

9 MR. WAMPLER: They are.

10 MR. SWARTZ: So, I mean, it is perfectly conceivable
11 to me, and I haven't researched the permitting stage here, but
12 it is not unusual for somebody to get notice of a permit and
13 not get notice in the pooling application because the notice
14 requirements are totally different.

15 MS. RIGGS: Right. In a permit application, surface
16 owners get notice. In a pooling application, they do not.

17 DANNY MCCLANAHAN: Well, I'm not a surface owner,
18 ma'am.

19 MS. RIGGS: Well, but up until...until you asserted
20 your claim as a gas owner, their title shows you as a surface
21 owner.

22 DANNY MCCLANAHAN: No, ma'am, it didn't. The first
23
24
25

1 well, it showed me...their researchers showed me as a gas
2 owner. On T36, yes, ma'am.

3 MS. RIGGS: Well, let's go back and look at the
4 statute, okay. The statute was put into place to allow coalbed
5 methane to be produced---.

6 DANNY MCCLANAHAN: I understand what all that is,
7 ma'am.

8 MS. RIGGS: ---in the absence of a determination of
9 ownership.

10 DANNY MCCLANAHAN: That's exactly right.

11 MS. RIGGS: And it's a mechanism whereby an operator
12 can protect themselves from a trespass action.

13 DANNY MCCLANAHAN: I understand that, ma'am.

14 MS. RIGGS: Well, if they didn't protect themselves
15 from a trespass action by you, then that is their problem if
16 you sue them in court for trespass. It is not a Board issue.

17 DANNY MCCLANAHAN: I can't...I can't sue them for
18 trespassing. I'm wanting them to go by the law which you, the
19 Board, clearly don't seem to want them to go by.

20 MS. RIGGS: Well, they're offering to do that. They
21 offering to add you to the pooling and that doesn't seem to be
22 what you're looking for.

23

24

--

1 MR. WAMPLER: You want us to deny that?

2 DANNY MCCLANAHAN: I would have liked to have talked
3 with them about participating as a nonparticipating owner.

4 MS. RIGGS: Well, when this is modified...when this
5 pooling application is modified---.

6 MR. WAMPLER: You'll have that opportunity.

7 MS. RIGGS: ---you will be offered all the elections
8 as if you had been initially named as a party. You will have a
9 right to accept a cash consideration be leased, be a
10 participating operator, or be a carried operator. You'll be
11 given those options. That's the effect of adding you as party.

12 DANNY MCCLANAHAN: But, he was saying that...you all
13 was saying that giving notice to...on these force pooling and
14 gas wells is not the same. It's the same.

15 MS. RIGGS: No, we said on a permit.

16 DANNY MCCLANAHAN: On a permit, that's...on a permit
17 for a gas well. They're supposed to give...if they disturb on
18 my land, right?

19 MS. RIGGS: Right.

20 MR. WAMPLER: That's right.

21 DANNY MCCLANAHAN: But, they didn't disturb on T36.
22 They did not disturb my land and yet they showed that I was a

23

24

--

1 gas and oil owner. Then after these people got a lawyer, they
2 made a determination that I wasn't then they started leaving me
3 out.

4 MS. RIGGS: Now they're saying they'll add you in and
5 give you all the elections you would have had. That's the only
6 remedy that there is in the law.

7 DANNY MCCLANAHAN: Well, what about the law for them
8 posting signs and stuff on these abandoned wells, which there's
9 none in the county, erosion, sediment control. I've got
10 pictures here---.

11 MS. RIGGS: That's all permitting issues which this
12 Board does not have jurisdiction over. This Board handles
13 compulsory pooling, establishment of field rules, statewide
14 spacing, and appeals of permitting decisions. Those are the
15 four kinds of actions that can come before this Board.

16 DANNY MCCLANAHAN: All right. Well, who do I have to
17 go to to see that where they were violating the law on these
18 brush barriers and such like that?

19 MS. RIGGS: The gas and oil inspector administers
20 Article Three of the act which is the permitting provisions of
21 the act. That's the division of gas and oil.

22 MR. WAMPLER: Now, have you had an opportunity to
23
24
25

1 examine these records this morning where they've added your
2 claim?

3 DANNY MCCLANAHAN: No, I haven't.

4 MR. WAMPLER: I think they gave you a copy there.

5 DANNY MCCLANAHAN: Is this them right here? Yeah. I
6 believe you've got a couple pieces of my paper.

7 MR. WAMPLER: Right here.

8 MR. SWARTZ: Well, these are just copies.

9 (Mr. McClanahan looks over the documentation.)

10 DANNY MCCLANAHAN: I believe it's all three different
11 ones, ain't they?

12 MR. SWARTZ: There's two for each unit. There's a B3
13 and E for each unit.

14 THELMA OSBORNE: Okay. I've got the E3.

15 MS. RIGGS: The B3 are all the pooled parties and the
16 E are the claims subject to escrow.

17 MR. WAMPLER: Mr. Arrington, you want to explain what
18 you've done.

19 MR. ARRINGTON: If you'll notice on the B3, we've
20 added Danny McClanahan as a conflicting oil and gas claimant.

21 MR. SWARTZ: Danny, why don't you just pass these
22 down. We've got some extra copies.

23

24

25

1 MR. ARRINGTON: And it's the same on all the exhibits.
2 He's listed last.

3 DANNY MCCLANAHAN: Well, you've got them all right
4 there. There's four of them. Give me one of them.

5 MR. KING: Is this exhibit E and B3?

6 MR. SWARTZ: T36 and S36 units.

7 THELMA OSBORNE: Well, I don't have one of the B. All
8 I've got is the E of all of them.

9 DANNY MCCLANAHAN: B3, E, and---.

10 MR. SWARTZ: There's two B3's and two E's because
11 there's one for each unit.

12 DANNY MCCLANAHAN: Okay.

13 THELMA OSBORNE: There's two E's?

14 MR. SWARTZ: There one for T36 and one for S36.
15 (Mr. Swartz explains the documentation to Thelma
16 Osborne.)

17 MR. WAMPLER: Do you understand what they're doing,
18 everyone? They're just adding him as a claimant and then, like
19 I say, until that's resolved either in court or by agreement of
20 parties, you know, that's...that will remain...that money will
21 go into escrow. He will have the same election...he will have
22 the same election options as you folks had when the pooling

1 orders came out.

2 NANCY STILLWELL: But, if they put it in a escrow
3 account, we don't want them to take our money out to help pay
4 for the roads and everything. That's their problem. That's
5 not ours.

6 MS. RIGGS: The...the escrow is put with the Board.
7 The Board controls the escrow, not the operator.

8 NANCY STILLWELL: But, I mean, they're going to take
9 money from us to help keep the maintenance and everything up on
10 their vehicles and everything to keep the stuff a going.
11 That's what them papers said.

12 MS. RIGGS: No, what it says is it depends on the
13 election that you make. Whether you are...you take a working
14 interest or whether you take a royalty interest, and I don't
15 know whether your interest is leased or whether you made an
16 election under the pooling. Probably leased.

17 NANCY STILLWELL: No, we have a lease. We didn't make
18 any five dollars (\$5) a year.

19 MS. RIGGS: Well, then you were compulsory pooled
20 which is a lease, okay. So, you're getting a cash bonus into
21 escrow plus a one-eighth royalty.

22 DANNY MCCLANAHAN: Was that one-eighths still hold up

23

24

25

1 after...if you're a nonparticipating owner or how does that
2 work?

3 MS. RIGGS: No, if you're carried or participating?

4 DANNY MCCLANAHAN: Nonparticipating. That's non-
5 carried that way it's three hundred plus or something like
6 that.

7 MS. RIGGS: Three options, you can participate which
8 means you take your interest in the unit times the estimated
9 cost of the well---.

10 DANNY MCCLANAHAN: Right.

11 MS. RIGGS: ---and you placed that into the escrow
12 account and at that point you become a working interest owner
13 entitled to your share of the seven eighths portion.

14 DANNY MCCLANAHAN: Uh-huh. All right.

15 MS. RIGGS: Or you can be carried. If you're carried,
16 you don't have to put any money up front---.

17 DANNY MCCLANAHAN: Right.

18 MS. RIGGS: ---but, you still have a part of the
19 working interest, but you don't get paid until such time as
20 your part is repaid out of royalties with the penalty that's
21 set out in the statute and it's two hundred percent (200%) if
22 it's leased and three hundred unleased, I think.

23

24

--

1 DANNY MCCLANAHAN: All right.

2 MS. RIGGS: Or, if you do nothing, you are deemed to
3 be leased and you will be subject to the lease terms under the
4 statute and that's the cash bonus and one eighth royalty.

5 DANNY MCCLANAHAN: All right. I'd like to ask you a
6 question on this force pooling here. On a estimated cost of
7 this first well here, you know, they say it might be a, last
8 time I mentioned that to them, it might be a misprint. The
9 cost of this first one on T36 was \$250,475, right? And this
10 next one, and this has done been through the court, I want to
11 know why it's so much, \$2,451,015.

12 MS. RIGGS: Well, that's obviously a misprint.

13 DANNY MCCLANAHAN: Well, obviously ma'am, though, the
14 judge---.

15 MR. SWARTZ: That was in Oakwood two.

16 MR. ARRINGTON: I believe that was in Oakwood two. I
17 don't know.

18 DANNY MCCLANAHAN: The judge would have to say he
19 would have to go on what's went before the court, you know,
20 which it's been same going to court and it's done...if I
21 couldn't fight it...if I was in on this, they would have to say
22 my appropriate share would be that part of two million four

23

24

--

1 hundred and some thousand dollars.

2 MS. RIGGS: Well, that's an Oakwood two drilling unit.
3 You're comparing two different kinds of drilling units, I
4 think. In an Oakwood two, you're into active gob production.
5 There's three kinds of coalbed methane wells. One's an eighty
6 acre generally grid frac well in advance of mining. The second
7 phase of wells is active gob production which is during mining,
8 but after they have cut the entries and isolated the long wall
9 panels and they're producing off of the longwall panel---.

10 DANNY MCCLANAHAN: Well, that falls into where you get
11 into court migratory gases there because methane gas is just
12 include the gas that's trapped. You know, who's to say when
13 peat moss that was in there in prehistoric ages when it was
14 making coal gave off this gas into the other strata into like
15 the gas research institute states that coal is a good absorber
16 of the gas. So, it had to absorb it from somewhere.

17 MR. WAMPLER: Danny, let her finish. She's trying to
18 help you on three different types of wells so you'll understand
19 on trying to get the cost question you asked.

20 MS. RIGGS: The third type of drilling unit is sealed
21 gob production and that's after the mining's been completed,
22 long wall mining, and you've got the gob area and those units

23

24

--

1 are generally huge units like over a thousand acres because now
2 you've got one pool of gas. So, what happens is the production
3 is allocated back to the owners of the gas based on their
4 proportionate interest in the entire drilling unit.

5 DANNY MCCLANAHAN: Okay. But, what I'm wanting...what
6 I would like to know is what is the difference here because---.

7 MS. RIGGS: I think you're looking at an Oakwood one
8 and an Oakwood two.

9 DANNY MCCLANAHAN: It don't say it, though, ma'am.
10 All it says is unit number S36 or T36. It don't say nothing
11 about gob wells.

12 MS. RIGGS: Are you looking at the...what are you
13 looking at, the pooling?

14 DANNY MCCLANAHAN: The force pooling. Yes, ma'am.

15 MR. SWARTZ: There was a typographical error, if he's
16 looking at S36, there's a typo in the notice. The number was
17 right in the application, right in the exhibits. It's
18 \$245,000.

19 MS. RIGGS: You need to look at the pooling order, at
20 what the Board approved in terms of cost.

21 DANNY MCCLANAHAN: Right. I would like to know that,
22 you know, because the pooling order that you all gave me has

23

24

--

1 got---.

2 MS. RIGGS: That's not the pooling order. That's the
3 application.

4 MR. SWARTZ: Pooling order has \$245,015.

5 DANNY MCCLANAHAN: Oh, does it. I just know the
6 application there, exactly what I was going by.

7 MS. RIGGS: That's not what the Board approved. The
8 Board approved it and entered its order, he's looking at the
9 copy there. That got corrected.

10 MR. WAMPLER: Give me that number again if you have
11 it, Mark. If we have it here, I'll give him my copy.

12 DANNY MCCLANAHAN: He's right.

13 MR. WAMPLER: After examining these, Mr. McClanahan,
14 do you have any questions on what's been done here?

15 DANNY MCCLANAHAN: No, sir. Just outside this...the
16 violations on the property being not surveyed, you know, that,
17 you know, it states that they're supposed to be showed with
18 solid lines if they were actually surveyed, which it hasn't
19 been surveyed, which enables them to move it over anytime they
20 want to. You know, if it ain't surveyed, they're taking them
21 from deeds. They're supposed to be showed with a broken line.

22 So, you all telling me that you all don't have nothing do to

23

24

25

1 with that, right?

2 MR. WAMPLER: Well, we'll have Mr. Fulmer...what we're
3 telling you is Mr. Fulmer will look into it...into that and the
4 other questions that you had about alleged violations of brush
5 barrier.

6 DANNY MCCLANAHAN: Another question before we do
7 conclude here. I don't know how...if we do that, does by
8 law...I can't quote it right off hand, does he have ten days to
9 make a determination or help me out somehow or what?

10 MS. RIGGS: Are you talking about permitting now or on
11 this pooling?

12 DANNY MCCLANAHAN: On...well, on the violations,
13 ma'am, is what I'm talking about. If I feel like he ain't
14 done, you know, to my---.

15 MS. RIGGS: That's an enforcement issue.

16 DANNY MCCLANAHAN: Right. Yes, ma'am. So, that's up
17 for the courts to do?

18 MS. RIGGS: Well, no. You file your complaint with
19 the Division of Gas and Oil and then they---.

20 DANNY MCCLANAHAN: Well, I've just done that. It's in
21 these papers here. All of the gas laws docket said that you
22 violated...I feel like they violated. See, that's why I jumped

23

24

--

1 on you'uns right off the bat that you made me sound like that
2 that all I came over here for was for you all to determine
3 ownership of gas and oil onto my property and it's not.

4 MS. RIGGS: Well, that's all this Board can do is
5 address the pooling issues.

6 MR. WAMPLER: That's the only thing we had
7 jurisdiction on, Danny.

8 DANNY MCCLANAHAN: But, why...well, that's what I'm
9 saying, ma'am. My next recourse, if they broke the law, to
10 take it to the Commonwealth Attorney and let them prosecute
11 them for breaking Virginia law?

12 MS. RIGGS: I don't think there are any criminal
13 sanctions in the Gas and Oil Act, and the Commonwealth Attorney
14 would only prosecute criminal sanctions. You're talking about
15 a civil action in Circuit Court, if you're talking about
16 anything.

17 DANNY MCCLANAHAN: That's right. I know I wouldn't
18 get no monetary value out of it. It would be the county would
19 get the fines and everything, wouldn't it? It states that...I
20 don't know. It states that you all supposed to make this
21 in...in the law that you all are supposed to make these
22 decisions.

23

24

25

1 MR. FULMER: Can I address that enforcement issue? He
2 made an allegation that there was certainly... he felt certain
3 violations. You would submit that to our office, the
4 enforcement office, and not the Board. You submitted this to
5 the Board.

6 DANNY MCCLANAHAN: Okay. So, all I've got to do is
7 come back and submit it to you again?

8 MR. FULMER: That's right and then we will review it.

9 MR. WAMPLER: You won't have to come back, you can
10 hand it to him.

11 MR. FULMER: Well, yeah.

12 DANNY MCCLANAHAN: Well, he's got it right there. I
13 mean, he should have a copy of it.

14 MR. WAMPLER: But, anyway, that's the office that
15 would handle it.

16 DANNY MCCLANAHAN: I wrote it to you. That's right.
17 Mr. Benny Wampler, that's right. Let me find it here.

18 MS. RIGGS: We have a copy of your letter in our
19 packet here.

20 DANNY MCCLANAHAN: Okay. Well, that's...it's got all
21 the law violations I feel they've violated.

22 MR. WAMPLER: Okay.

23

24

25

1 MR. FULMER: Yeah, we...we can look at things in the
2 absence of property disputes. We'll look at everything else,
3 okay.

4 DANNY MCCLANAHAN: Do what now? Run that by me one
5 more time.

6 MS. RIGGS: They can't address the property ownership
7 issues, but they'll look at the permitting issues.

8 DANNY MCCLANAHAN: Right. Where the lines and such,
9 that's all I'm out for. I want to make sure you all go by the
10 laws that you all have set for them to go by, you know, that's
11 just like the trees and stuff. I mean, I've got all kinds of
12 pictures here. It states in your laws that there's not supposed
13 to be no big material and it's supposed to be in a compact
14 manner. There's stumps, logs everywhere, laying every which
15 way. I've got bunches of them, you know.

16 MR. FULMER: We'll be glad to look into it.

17 DANNY MCCLANAHAN: I hope so.

18 JOE HORNE: Could you maybe look into those cess pools
19 they got around them wells, too. There's no protection around
20 them. A kid gets in them, there's no way out.

21 THELMA OSBORNE: Did you bring your video of it?

22 JOE HORNE: They put plastic down and they can't come
23
24
25

1 out of there.

2 THELMA OSBORNE: Do they have a video thing on it?

3 That TV.

4 MARTHA WILLIAMS: VCR.

5 THELMA OSBORNE: VCR. Can you play a video on that?

6 MS. RIGGS: It's not our equipment. I have no idea.

7 THELMA OSBORNE: Would you see? She has a video.

8 MR. WAMPLER: Let...let me ask you what the...I mean,

9 we have to deal with the issue that's here and take care of the

10 business before the Board today and that's all we can take care

11 of.

12 JOE HORNE: That's what I was telling him. I wish he

13 would check on them.

14 KENNETH OSBORNE: Mr. Fulmer deals with criminal acts,

15 right?

16 MR. WAMPLER: No, he deals with permitting issues.

17 KENNETH OSBORNE: Okay. Who deals with complaints?

18 MR. WAMPLER: His office. His office.

19 KENNETH OSBORNE: His office.

20 THELMA OSBORNE: Arrington...Les Arrington, right?

21 Les Arrington?

22 MR. WAMPLER: No, that's with the company. Les

23

24

25

1 Arrington.

2 DANNY MCCLANAHAN: He does the...he does the

3 permitting. He's the permit specialist.

4 THELMA OSBORNE: That's who...the one that come up and

5 looked at the gas where I was telling you about where they had

6 put the well on our land, on our right of way. He told me to

7 go to Les Arrington and talk to him.

8 LES ARRINGTON: Yeah. Never heard from you.

9 THELMA OSBORNE: Well, he just called me Friday. He

10 just called me Friday.

11 KENNETH OSBORNE: Since IMS regulates the water down

12 here, who do we address on those issues?

13 MR. WAMPLER: On water?

14 KENNETH OSBORNE: Yes, sir.

15 MR. WAMPLER: You talking about drainage or anything

16 specific?

17 KENNETH OSBORNE: Talking about the drinking water.

18 MARTHA WILLIAMS: What they don't have to drink

19 anymore, sir. What they used to have, but it's gone.

20 KENNETH OSBORNE: IMS does all the testing on them,

21 right?

22 MR. WAMPLER: I don't know IMS. I mean, I'm not

23

24

25

1 familiar with IMS.

2 KENNETH OSBORNE: They work for Consol. You fellows
3 should know. IMS doesn't work for you? They do these water
4 reports?

5 MR. ARRINGTON: Not IMS, no.

6 DANNY MCCLANAHAN: EMS, ain't it? EMI?

7 MR. ARRINGTON: EMI.

8 DANNY MCCLANAHAN: EMI's the name of it.

9 MR. WAMPLER: Are you talking about a laboratory that
10 does that?

11 KENNETH OSBORNE: That's right. EMI. Who do we
12 address complaints?

13 MR. WAMPLER: On water loss? That goes through Mr.
14 Fulmer's office.

15 KENNETH OSBORNE: I found out it seems that there
16 hasn't been any complaints registered about the water in
17 Virginia and that's why nobody's done nothing about it, which
18 that's not true because I know three I've registered myself,
19 even as far as talking to the EPA and there's several things I
20 don't understand is---. I mean, according to these tests,
21 you've got a lab manager and a QC officer and these...I'm just
22 wondering if these people working there, anybody's allowed to
23
24
25

1 sign their name or they have to be the officer to sign the name
2 on these papers that's supposed to be to their knowledge true
3 and correct?

4 MR. WAMPLER: See, I mean you're...you're dealing
5 with a report...I mean, it's not our report. That's apparently
6 a laboratory report somewhere that's been provided.

7 KENNETH OSBORNE: EMI, that is from Consol, right?

8 MR. FULMER: (Inaudible.)

9 MR. ARRINGTON: That's just a private company that
10 does our water sampling for us.

11 MR. WAMPLER: Well, let's go ahead and take care of
12 this and then if there's discussion issues, we'll allow some
13 time with the Board.

14 DANNY MCCLANAHAN: Well, I found out what I need to
15 know today, that's, you know, for sure.

16 MR. WAMPLER: Okay. Well, we...you want us to act on
17 this issue and we want to take care of that.

18 DANNY MCCLANAHAN: But, now if I elected to...it still
19 force pool me if I elect to be a nonparticipating owner with
20 them, it's still got to be escrowed the same way?

21 MS. RIGGS: Well, now, there's no such thing as a
22 nonparticipating owner, so I'm not real sure when you say that.

23

24

25

1 I know you have something in mind. A carried operator is the
2 way it's listed in the...in the election.

3 DANNY MCCLANAHAN: It says what?

4 MS. RIGGS: A carried operator.

5 DANNY MCCLANAHAN: Well, it does in one of these here.
6 I don't know if it was revised order or not, that's the way it
7 said it in there.

8 MS. RIGGS: Okay. Well, if you have any questions
9 when you get your pooling, when you're considering which of the
10 options that you want to elect, I think it's pretty clear in
11 the pooling order exactly what each of those elections means to
12 you.

13 DANNY MCCLANAHAN: Yeah, it is. It gives you three of
14 them and the fourth one is if you don't make a decision, it's
15 decided as---.

16 MS. RIGGS: It's the same as the cash consideration.

17 MR. WAMPLER: Mr. Swartz, you want to restate what
18 you've presented to the Board here today?

19 MR. SWARTZ: We would like to see the Board facilitate
20 Mr. McClanahan's concerns that he is a claimant to the CBM in
21 these two units, T36 and S36. We have provided the Board with
22 the exhibits necessary to enter a modification order pooling

23

24

--

1 him and giving him his election rights and that would be...that
2 would be our preference. I'm not sure that he's asked you to
3 do that, but it seems to us to be a solution to his concerns.

4 MR. WAMPLER: Well, I think he's agreed to that as to
5 that particular issue before the Board.

6 DANNY MCCLANAHAN: Right. Yeah.

7 MR. WAMPLER: Is that correct Mr. McClanahan?

8 DANNY MCCLANAHAN: Yes.

9 MR. WAMPLER: Okay. Do we have a motion to that
10 effect?

11 MR. LEWIS: I make a motion for that effect.

12 MR. WAMPLER: Second?

13 MR. KING: Second.

14 MR. WAMPLER: Motion and second. Any further
15 discussion?

16 (No audible response.)

17 MR. WAMPLER: All in favor, signify by saying yes.

18 (All Board members signify yes.)

19 MR. WAMPLER: Opposed, say no. You'll be added to in
20 accordance with the discussion today. There's no other
21 business before the Board, so as far as the hearing goes, the
22 hearing is closed.

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF VIRGINIA,
COUNTY OF BUCHANAN, to-wit:

I, SHELLIE BROWN, Court Reporter and Notary Public
for the State of Virginia, do hereby certify that the foregoing
hearing was recorded by me on a tape recording machine and
later transcribed by me personally.

Given under my hand and seal on this the 29th day
of June, 1999.

NOTARY PUBLIC

My Commission Expires: February 28, 2003